

Music Fair Road Limited Partnership,
Petitioner

* Before The Zoning Board
* of Howard County
ZB Case No. 1075M
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DECISION AND ORDER

On March 4, 2009 the Zoning Board of Howard County, Maryland considered the petition of Music Fair Road Limited Partnership for an amendment to the Zoning Map of Howard County to rezone 11.733 acres of land from the CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District to the POR (Planned Office Research) Zoning District, with Site Plan Documentation for a nursing home with assisted living. The subject property is located on the southeast side of US 1 approximately 400 feet northeast of Montevideo Road and is identified as Tax Map 43, Grids 4 and 10, Parcel 32 at 7615 US 1 (Washington Boulevard).

The notice of the hearing was advertised, the subject property was posted and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners, all of which were made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's Recommendation, were made part of the record. The Department of Planning and Zoning and the Planning Board recommended approval of the petition.

The Petitioner was represented by Sang Oh, Esquire. No one appeared in opposition to the petition. The Zoning Counsel appeared pursuant to Section 16.1000 of the Howard County Code to support the comprehensive zoning of the subject property.

After careful evaluation of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner proposes rezoning the 11.733 acre subject property from the CE-CLI to the POR Zoning District. The Petitioner also proposes a documented site plan ("DSP") for a proposed 93 bed nursing home with assisted living facility on the subject property. The DSP shows one four story building with a total of approximately 85,246 square feet and an open courtyard in the center of the proposed development. The parking tabulation indicates that there would potentially be 164 beds within the facility as well as a 5,000 square foot medical clinic.

2. The proposed building would be setback approximately 18 feet from the US 1 right-of-way, necessitating the approval of a variance from the 30 foot setback requirements for buildings in the POR District if the petition is granted.

Access to the subject property as shown on the DSP is via a 30 foot driveway that leads to the main entrance, parking areas in the rear of the building and a loading area. An 11-12 foot retaining wall is also shown on the DSP. The DSP also notes that Subdivision and Land Development Regulation waivers for environmental encroachments will be necessary to obtain based on the planned site design, and that these will be sought at the site development plan stage of the process.

3. The Petitioner relied on mistake in the comprehensive zoning of the property as a basis for rezoning. As to the issue of mistake in the last comprehensive zoning, the Board finds that the Petitioner has established sufficient evidence of mistake in the CE-CLI zoning of the subject property in the 2004 Comprehensive Zoning to justify the requested rezoning to the POR zoning District, and it makes the following specific findings on this issue:

a. The County Council rezoned numerous properties in the US 1 Corridor to CE, CAC or TOD Districts in the 2004 Comprehensive Zoning, so that of the 13,000 acres in that corridor, only one 3 acre parcel owned by the County was zoned so as to permit a nursing home or residential care facility as a matter of right; and

b. While nursing homes and residential care facilities are permitted by conditional use in a number of residential districts, this method of approval has limits on the number of beds permitted, fewer than 16, and involves issues of compatibility not involved with zoning districts permitting these uses by right; and

c. The residentially-zoned properties in the US 1 Corridor, on which conditional use nursing homes and residential care facilities could be approved, are not adjacent to a public transportation route such as US 1, an important factor for those living in such facilities;

d. The County Council's non-provision of nursing homes and residential care facilities by right in the US 1 Corridor was not accommodating a need recognized by the 2000 Howard County General Plan (Chapter 4, p. 142), the Howard County Human Services Master Plan (p. 71) and Zoning Board case 1055M, a 2006 piecemeal rezoning grant; and

e. A main purpose of the CE District is to encourage the consolidation and assemblage of underutilized parcels near US 1 for redevelopment. It is undisputed that various environmental features surrounding the property physically isolate the property and remove the potential for consolidation.

These two factors, failure to provide for a recognized need for nursing home and residential care facilities by right along the US 1 Corridor, and the failure to recognize that the subject property could not meet a main purpose of the CE District, to encourage consolidation, are sufficient to support a finding by the Board that CE Zoning was a mistake in the 2004 Comprehensive Zoning. The Zoning Counsel acknowledged that there were sufficient facts presented on the issue of mistake to support a finding by the Board that there was a mistake in the CE-CLI Comprehensive Zoning of the subject property.

4. The Board finds that the most appropriate zoning of the subject property is POR. This zoning category will allow the provision of much needed nursing home and residential care facilities in the US 1 Corridor by right to serve the transformed residential and mixed use community, with easy access to public transportation.

5. The Board also finds that the only use that will be permitted on the subject property as rezoned with the site plan documentation, a nursing home with assisted living facilities, meets all the requirements for approval of documented site plans under Section 100.G.2.d of the Zoning Regulations, based on the Department of Planning and Zoning's Evaluation in Section IV.D. of the Technical Staff Report, an evaluation which the Board accepts as correct and adopts as its own.

CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the subject property and/or change in the character of the neighborhood of the subject property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant rezoning.

2. The evidence which the Petitioner presented to show mistake in the 2004 Comprehensive Zoning of the subject property in the CE District was sufficient to overcome the strong presumption of correctness attached to that Comprehensive Zoning based on the Board's findings of fact. Change in the character of the neighborhood need not and will not be addressed in this decision because of the Board's findings as to mistake in comprehensive zoning.

3. Petitioner has met the onerous burden of proving strong evidence of mistake in the comprehensive zoning of the subject property sufficient enough to permit rezoning.

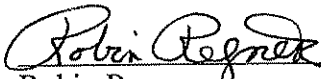
4. The appropriate zoning category for the subject property's rezoning is the requested POR Zoning District.


5. Petitioner met all the criteria contained in Section 100.G.2.d. of the Zoning Regulations for the approval of the documented site plan for the use of a nursing home with assisted living facilities on the subject property based on the submitted documentation.

For the foregoing reasons, the Zoning Board of Howard County, Maryland on this 8th day of June, 2009, hereby GRANTS the Petitioner's request for rezoning of the entire approximately 11.733 acre subject property as described herein from the CE-CLI to the POR Zoning District with the documented site plan.¹


ATTEST:

ZONING BOARD OF HOWARD COUNTY

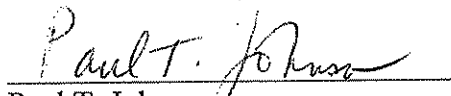

Robin Regner
Administrative Assistant

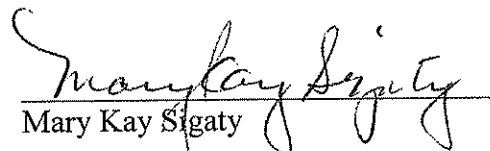

Calvin Ball, Chairperson

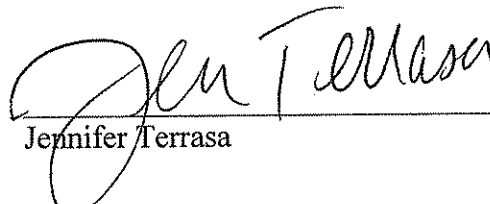
PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


Courtney Watson, Vice Chairperson


Greg Fox


Paul T. Johnson
Deputy County Solicitor


Mary Kay Sigaty


Jennifer Terrasa

¹ The Board notes that the rectangular box on the DSP referring to an "area of parcel not proposed for rezoning" is to be disregarded and is hereby removed since the entire described 11.733 acre subject property was proposed for approval of rezoning and the documented site plan and all notices of the proposal included the entire 11.733 acre parcel.